



STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH
GOVERNOR

August 14, 1998

Ms. Patricia Montoya
Regional Director
Department of Health and Human
Services, Region VI
11301 Young Street, Suite 1124
Dallas, TX 75202

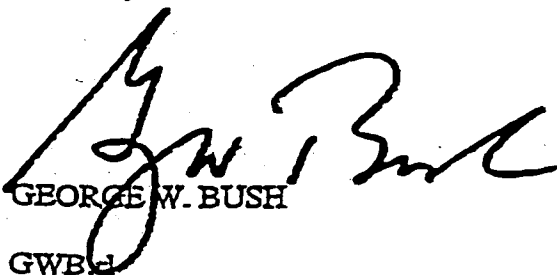
Mr. Ralph D. Rouse
Regional Manager
Office for Civil Rights
Region VI

Dear Ms. Montoya and Mr. Rouse:

Thank you for your recent letter providing 18 points and associated guidelines designed to implement the provisions of Children's Health Insurance Program as envisioned in the Balanced Budget Act of 1997.

By way of this letter, I am forwarding them to Mr. Don Gilbert, Commissioner of Health and Human Services.

Sincerely,


GEORGE W. BUSH
GWB:1

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OFFICE OF THE STATE
MEDICAID DIRECTOR

cc: Mr. Don Gilbert, Health and Human Services Commission

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director
Region VI

1301 Young Street, Suite 1124
Dallas, Texas 75202

July 13, 1998

GOVERNOR'S OFFICE RECEIVED 20 0068 JUL 17 1998 ROUTE TO: <u>Pol/HHS</u> CC TO: <u>BTP</u>

The Honorable George W. Bush
Office of the Governor
P. O. Box 12428
Austin, Texas 78711

Dear Governor Bush:

The Balanced Budget Act of 1997 includes provisions for a new children's health insurance initiative. Phase I of the Texas State CHIP was recently approved for implementation. Recipients of Federal financial assistance are required to comply with Federal civil rights laws which prohibit discrimination against beneficiaries of programs on the basis of race, color, national origin or disability. As recipients of Federal financial assistance, Texas state agencies are required to conduct the CHIP in compliance with the applicable civil rights regulations.

In our experience it is easier and more cost effective to ensure nondiscrimination by incorporating the necessary mechanisms at the very start rather than afterwards, which can entail a loss of time and money. For example, revising brochures and pamphlets can mean the added expense of printing new ones and discarding old ones.

One of the missions of the Office for Civil Rights (OCR) is to provide technical assistance to states and state agencies that receive Federal financial assistance from the U.S. Department of Health and Human Services. In that spirit we have enclosed, with this letter, guidelines which can help the creators of the Texas Children's Health Insurance Program to ensure equal opportunity for minorities and people with disabilities to enjoy the benefits of the program.

The following is a summary of the guidelines for programs to evaluate their ability to deliver services to minorities, including Limited English-speaking Persons (LEPs), and people with disabilities. The term program, as used herein, means the agency, facility or entity which operates a health or human service program that receives Federal financial assistance from the U.S. Department of Health and Human Services.

1. Do not limit eligibility or deny service on the basis of disability, diagnosis or pre-existing medical condition except as required by Federal law.

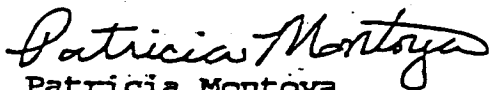
2. Do not limit eligibility or deny service on the basis of age except as allowed or required by Federal law.
3. Do not limit eligibility or deny service on the basis of race, color or national origin.
4. Translate written marketing materials into the primary language(s) of non-English-speaking residents.
5. Use community organizations and advocates to reach out to minority communities.
6. Utilize bilingual and culturally competent persons during outreach to Limited English-speaking Persons (LEPs).
7. Develop a policy of nondiscrimination on the basis of race, color, national origin, disability and age. Disseminate the policy to employees, staff, referral sources and the general public. Include the policy in any written materials, such as brochures and pamphlets, provided to potential or actual clients.
8. Ensure that no racially identifiable geographic area is excluded from coverage.
9. Since immigrants are now ineligible for many programs, be sensitive and resist making assumptions about the legal status of a person on the basis of a person's skin color or language.
10. Programs which employ 15 or more employees have an obligation to provide auxiliary aids to disabled clients. This includes, but is not limited to, sign language interpreters, materials in braille, and amplified telephones.
11. Locate services and programs at sites which are not remote and are served by public transportation.
12. Examine whether all services and activities are accessible to people with disabilities.
13. Develop language and cultural competency, preferably by having in-house employees and staff. As an alternative, develop procedures to ensure effective communication with LEPs and the hearing impaired through arrangements with qualified outside agencies or persons.
14. Develop a grievance procedure for persons who wish to file complaints of discrimination.
15. Provide equal opportunity to all persons to participate as members of boards or advisory bodies, subcontractors and providers.

16. Review the program for adherence to standards of medical practice regarding persons with communicable disease. Review the program's performance in responsiveness to ethnic and cultural needs.
17. Set equitable reimbursement rates and allocate funds in a manner that does not discriminate on the bases of race, color, national origin, disability or age.
- X 18. Examine the program's policies, practices and procedures for criteria or measures that may cause discrimination.

The enclosed guidelines provide more detail about each of the eighteen points listed above.

Both the Office of the Regional Director and the Office for Civil Rights are available to provide assistance where needed. OCR staff are also available, upon request, to meet with state agency staff designated to implement the CHIP to provide more detailed assistance. Requested for assistance of a general nature should be directed to the Office of the Regional Director at (214) 767-3301. Requests for assistance in complying with civil rights regulations should be directed to the Regional Manager of the Office for Civil Rights at (214) 767-4056.

Sincerely,



Patricia Montoya
Regional Director
U.S Department of Health
and Human Services, Region VI



Ralph D. Rouse
Regional Manager
Office for Civil Rights
Region VI

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Enclosure

The following is intended as a guideline for programs to evaluate their ability to deliver services to minorities, including Limited English-speaking Persons (LEPs), disabled persons and all persons regardless of age. The term program, as used herein, means the agency, facility or entity which operates a health or human service program that receives Federal financial assistance from the U. S. Department of Health and Human Services.

I. Eligibility Criteria

Do not limit eligibility or deny service on the basis of disability, diagnosis or pre-existing medical condition except as required by Federal law.

A person may not be excluded from services because of a disability, including but not limited to HIV, MRSA, VRE, TB, hearing impairments, a history of cancer or heart disease and end stage renal disease except as required by Federal law.

Do not limit eligibility or deny service on the basis of age except as allowed by Federal law.

A person may not be excluded from services on the basis of age unless a local, State or Federal law expressly sets age criteria or the use of age meets the four part test for exception to this rule. See 45 CFR § 91.13

Do not limit eligibility or deny service on the basis of race, color or national origin.

A person may not be excluded from services on the basis of race, color or national origin.

II. Outreach

Translate written materials which are used in marketing into the primary language of non-English-speaking residents .

Include multilingual mechanisms in the outreach process. Translate brochures and fact sheets in languages other than English in areas which have a significant population that is LEP. Advertisements should be in other languages. Bilingual operators should be available to those who call the toll-free hot line. There should be interpreter capability at the public meetings and forums.

The same principles apply to the needs of the hearing impaired. Sign language interpreters should be used. Telecommunication Devices for the Deaf (TDD) should be obtained.

If public meetings are offered, consideration should also be given to holding some of the public meetings in minority communities.

Use community organizations and advocates to reach out to minority communities.

To reach minority communities the program should consider enlisting the aid of community organizations and social service agencies which are located in the minority communities to the list of sites that will be used in the outreach process.

Utilize bilingual and culturally competent persons during outreach to Limited English-speaking Persons (LEPs).

In the marketing process avoid the pitfall of giving prospective clients limited information, verbal or written, about the program. Translate written materials. Have bilingual or sign language proficient employees. Avoid giving patients/clients incomplete or erroneous information or misleading impressions.

III. Policy

Develop a policy of nondiscrimination on the basis of race, color, national origin, disability and age. Disseminate the policy to employees, staff, referral sources and the general public. Include the policy in any written materials, such as brochures and pamphlets, provided to potential or actual clients.

Develop a policy of nondiscrimination. Disseminate the policy to staff, particularly admission and treatment staff, referral sources, providers of care, employees, board or advisory council members, and unions and professional organizations with which the program has collective bargaining or other professional agreements. Have a plan for providing continuing notice to inform new employees, board members, providers, etc.

Include the policy of nondiscrimination in written materials such as brochures, pamphlets and manuals.

IV. Enrollment

Marketing

Ensure that no racially identifiable geographic area is excluded from coverage.

A program may not exclude certain geographic areas from its

service area because of the race or national origin of the majority of the residents of that area. Nor may it exclude a racially identifiable geographic area because there is little profit or the potential for increased administrative costs which will cut into profits.

Marketing staff should be conversant with the language of the LEP residents of the area.

Immigrants

Since immigrants are now ineligible for many programs, be sensitive and resist making assumptions about the legal status of a person on the basis of a person's skin color or language.

Since the Welfare Reform laws intentionally exclude, in some cases, migrants whether here legally or not, staff of the health providers should be sensitized to resist making assumptions about the legal status of a person on the basis of a person's skin color or language.

V. Delivery of Services

Auxiliary Aids

Programs which employ 15 or more employees have an obligation to provide auxiliary aids to disabled clients. This includes, but is not limited to, sign language interpreters, materials in braille, and amplified telephones.

Programs which employ 15 or more employees have an obligation to provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question. This includes, but is not limited to, sign language interpreters, materials in braille, audio tapes and amplified telephones.

Site Selection

Locate services and programs at sites which are not remote and are served by public transportation.

The location of a service might be a deterrent to minority, and disabled clients if the service site is remote and cannot be reached by public transportation.

Accessibility

Examine whether all services and activities are accessible

to disabled persons.

Examine whether all services and activities are accessible to disabled persons.

Doors, bathrooms and other amenities offered to patients/clients should be accessible to and usable by mobility impaired persons.

In selecting alternative plans to make the service accessible to the disabled patient/client, give priority to those alternatives that provide the service in the most integrated setting.

Some alternatives are referral to a larger program (this option is only available to programs which employ less than 15 employees) or offering the service at another site.

Notify the public, including persons with impaired vision or hearing, about the location of the accessible service and activities.

Develop a transition plan if structural changes are necessary to make the services accessible. In developing the transition plan consult disabled persons or organizations which represent disabled persons. See 45 CFR § 84.22(e).

Communication

Patients/Clients often cannot understand instructions regarding treatment, referrals and the like. They cannot give informed consent to procedures because a program lacks bilingual staff or staff who know sign language and lacks the procedures to secure interpreters. To overcome this problem programs often take action which violates civil rights laws. They either break the rules of confidentiality and use children, the friends of clients or other patients as interpreters. Or, they require patients to bring an interpreter once they are enrolled in the program. Furthermore, patients/clients cannot call to ask questions, voice complaints or disenroll. Given the lack of bilingual staff, the program has no mechanism to assess customer satisfaction among LEPs or the hearing impaired.

Hearing impaired: Develop a policy for communication with the hearing impaired. For communication with the hearing impaired a program must have a wide range of communication options available. One of the options is a sign language interpreter. Great weight must be given to the opinion of the patient or client about the most effective method of

communication. When an interpreter is needed, make arrangements to use certified sign language interpreters, unless staff is available to interpret at all hours of operation. Interpreters must be offered at no cost to the patient/client. Friends or family members may not be used unless the patient or client prefers that a friend or family member interpret.

LEP: The program must have a policy which requires that arrangements to use qualified interpreters be in place, unless staff is available to interpret at all hours of operation. The AT&T Language Line may be used only as a last resort. Interpreters must be offered at no cost to the patient/client. Friends or family members may not be used unless the patient or client prefers that a friend or family member interpret. See the section with the header Cultural Competence for further guidance regarding communication with the LEP patient/client.

Staff must be made aware of this policy and be taught the procedures to ensure effective communication.

Cultural Competence

Develop language and cultural competency, preferably by having in-house employees and staff. Otherwise, develop procedures to ensure effective communication with LEPs and the hearing impaired.

Under Title VI of the Civil Rights Act of 1964 a program must be able to communicate with the patient/client to ensure equal opportunity to receive the benefits of the service. The literature says that this is particularly important in delivering health care services. Clients who cannot understand instructions regarding treatment, referrals and the like are less likely to regain their health. They cannot give informed consent to procedures.

Cultural competence can be thought of as a set of interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among, and between groups. The individual with it has a willingness and ability to draw on a community's values, traditions, and customs and to work with knowledgeable persons of and from the community in developing focused interventions, communications and other supports. Bilingualism is not synonymous with biculturalism and therefore a program should seek to hire staff representative of the patient population to be served who are able to negotiate bicultural work assignments.

Grievances

Develop a grievance procedure for persons who wish to file complaints of discrimination.

Develop and make available to patients or clients a grievance procedure to address complaints of discrimination.

VI. Opportunity to Participate

This guideline applies to persons other than patients or clients. It applies to board members, providers under subcontract and vendors, as appropriate.

Boards

Provide equal opportunity to all persons to participate as members of boards or advisory bodies, subcontractors and providers.

Do qualified persons have the opportunity to serve as members of boards or advisory councils, without regard to race, color, national origin, disability, or age?

Are invitations to serve based upon personal relationships? Is the nomination process weighted in favor of friends and acquaintances of current board members or administration officials? This may exclude minorities.

Subcontractors - Providers

Set equitable reimbursement rates and allocate funds in a manner that does not discriminate on the bases of race, color, national origin, disability or age.

Absent a compelling programmatic reason, a program may not set lower reimbursement rates for providers who serve geographic areas which are racially identifiable as minority. For example, paying a provider in suburban, non-minority areas a higher rate than the rate paid for patients/clients in areas which are predominantly minority may be in violation of civil rights law.

VII. Quality Assurance

Review the program for adherence to standards of medical practice regarding persons with communicable disease. Review the program's performance in responsiveness to ethnic and cultural needs.

Develop and implement a Quality Assurance program to measure consistency with current standards of medical practice (e.g., AIDS testing, Hepatitis B immunizations) and ethnic

and cultural responsiveness (e.g., availability of interpreters, multilingual recipient handbooks).

VIII. Employment

Examine the program's policies, practices and procedures for criteria or measures that may cause discrimination.

Review contracts with employment and referral agencies, with labor unions, with organizations which administer fringe benefits to employees (e.g., insurance companies), and with organizations which provide training and apprenticeship programs to ensure that the agency does not discriminate against disabled individuals.¹

Include the program's policy of nondiscrimination in its contracts and subcontracts.

Examine whether steps have been taken to ensure that in the process to recruit employees there are not procedures that exclude any class of disabled persons because of the nature of the media used.²

Review policies related to hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring to ensure that they are not discriminatory.

Review medical, hospital, accident, life insurance and

¹ The laws which the Office for Civil Rights administers do not as a rule prohibit discrimination on the basis of race, color, national origin or age in employment. Title VI of the Civil Rights Act of 1964 does prohibit discrimination on the bases of race, color, national origin in employment if such discrimination causes discrimination against the patient or client. This law would not apply to many employees, e.g., an employee in a position with no patient or client contact. However, there are other Federal laws which do have much broader prohibitions against these forms of discrimination. The program would be well-advised to evaluate whether its contracts cause or permit these types of discrimination and, if so, to take appropriate action.

² Because the program is subject to other Federal laws governing discrimination in employment on the bases of race, color, and national origin, it should consider applying this same principle to examine whether its recruitment process uses media which do not reach the minority community, thereby excluding minorities.

retirement fringe benefits to ensure that they are not discriminatory.

Analyze each job to identify the essential functions of the job. Ensure that no physical or mental criteria, qualifications or duties have been included which are not essential or necessary, but which have the effect of excluding qualified disabled persons. The law requires that employers provide reasonable accommodations to disabled employees who are able to perform the essential duties of a job with a reasonable accommodation.

Analyze the employment application and eliminate any pre-employment inquiries which ask about physical or mental limitations rather than the ability to perform the job. An applicant for employment may be asked if s/he has the qualifications for a job, but may not be asked if s/he has a disability. An applicant may be required to take a physical examination only if a conditional offer of employment has been made and all applicants are required to take a physical. See 45 CFR § 84.14(c) and § 84.14(d).

Reasonable accommodation

Develop a policy of reasonable accommodation. See 45 CFR § 84.12.

Determine the level at which the decision whether to provide an accommodation or not is to be made. Document decisions that providing an accommodation would be an undue hardship.